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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,760	12/31/2003	Donald Aldridge	520219-299	9118
27805	7590	08/29/2006	EXAMINER	
THOMPSON HINE L.L.P.			HANEY, RICHAE LEE	
P.O. BOX 8801			ART UNIT	
DAYTON, OH 45401-8801			PAPER NUMBER	
			3765	

DATE MAILED: 08/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/749,760	<b>Applicant(s)</b> ALDRIDGE ET AL. ✓	
	<b>Examiner</b> Richale L. Haney	<b>Art Unit</b> 3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 22 July 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-49 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12, 14-31 and 35-49 is/are rejected.
- 7) ☒ Claim(s) 13 and 32-34 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>9/24/04, 5/26/04</u> | 6) <input checked="" type="checkbox"/> Other: <u>IDS 5/12/2005</u>                      |

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 45 is objected to because of the following informalities: claim 45 depends on method claim 26, but the claim language recites the apparatus "the garment" rather than the method (as recited properly in claim 48). Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 – 3, 5, 7 – 10, 12, 14, 15, 26 – 31, 35, 36, 39, 40, 42, 45, 47 and 49 are rejected under 35 U.S.C. 102(b) as being anticipated by Bailey (US 2,292,347). The device of Bailey discloses an outer shell (Figure 1) shaped to fit about the arms, chest, torso and legs of the wearer, the outer shell (10) is a single integral piece of material, a pouch coupled (11) to the interior of the outer shell, being sized and shaped to receive and retain generally all of the outer shell therein when the outer shell is in a compact position (Figure 3), the pouch includes an upper mouth (15) and a lower mouth (14) located generally opposite side of the pouch relative to the upper mouth (Figure 1), wherein upper (17) and lower (16) fastening mechanisms for selectively opening and closing the upper and lower mouths. The pouch is moveable between an inverted internal position wherein the pouch is located inside the outer shell (Figure 1) and an external position wherein the pouch is generally located outside the outer shell (Figure 3). It is noted that inverted is defined by Merriam-Webster dictionary as "to reverse in position, order, or relationship," the relationship of the upper and lower mouths of Bailey

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is reversed. The pouch is secured to the outer shell, in a position that is accessible to the wearer, and is secured generally around the entire periphery of the upper mouth (22, 23) and the pouch is configured as a sleeve when the upper and lower mouth are open. Sleeve is defined by Merriam Webster dictionary as "an open ended, flat cover" and is met by the pouch structure of Bailey. It is known that any and all fabric or material of a jacket would provide some degree of protection against abrasion, flame and heat. The USPTO office does not a laboratory to perform testing and cannot therefor ascertain the level of protection that Bailey would provide, since the device of Bailey performs in the same manner as the claimed invention, having a protective shell it can be assumed that resistance of the fabric would be of a similar configuration. The applicant does not provide criticality in the specification to the specific ranges claimed and therefore the prior art referenced meets the cited limitations.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 4 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bailey in view of Itoi (US 4,502,155). The device of Bailey is lacking hook and loop tape as a fastening material. The device of Itoi discloses a pouch having hook and loop (18A, 19A) material as closures at the bottom of the pouch (6). It would have been obvious to

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one of ordinary skill in the art at the time the invention was made to modify Bailey by utilizing hook and loop tape instead of zippers since they are known functional equivalents in the art.

5. Claims 16 – 25, 37, 38, 43, 44, and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bailey in view of Hayes (US 6,341,384). The device of Bailey is lacking an outer shell comprising an aramid material, a thermal liner and a moisture barrier consisting of expanded polytetrafluoroethylene (PTFE). The device of Hayes discloses an outer shell of a garment comprising aramid materials (30), a moisture barrier located generally inside and coextensive with the outer shell (40), and a thermal liner located generally inside the outer shell so that the moisture barrier (50) is in between the thermal liner and the outer shell. The moisture barrier (40) is comprised of GORE TEX® a type of expanded PTFE and the thermal liner (50) is comprised of an aramid batting (Column 1, lines 63 – 67). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Bailey by incorporating an aramid material, moisture barrier and thermal liner in order to protect the wearer from heat (column 1, lines 10 – 25).

6. Claims 41 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bailey in view of Itoi (US 4,476,587). The device of Bailey substantially discloses the claimed invention but is lacking a pouch on the front of the garment. The device of Itoi discloses a pouch on the front (18) of the garment. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the placement of pocket to the front where it may be more easily accessed. It is noted by

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the examiner that Bailey states that the locality of the pouch may be modified to other areas of the garment (Column 3, lines 31 – 34).

***Allowable Subject Matter***

7. Claims 13, 32, 33, and 34 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

DeWan (US 4,944,042), Poston (US 6,564,388), Davis (US 6,405,377), Barnes et al. (US 6,848,118), Dutrow (US 2,437,223), Freund (US 2,248,455), Mandelert (US 1,905,235), De Lott (US 4,700,409), Taylor et al. (US 5,924,134), Aldridge (US 5,920,905), Dunn (US 7,013,496), and Bush (US 5,673,836).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richale L. Haney whose telephone number is 571-272-8689. The examiner can normally be reached on M-F 8:00 - 4:30.

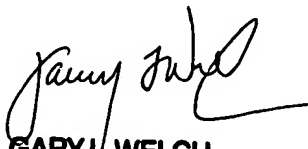
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on 571-272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Richale L. Haney  
Patent Examiner  
Art Unit 3765  
August 23, 2006

RLH



**GARY L. WELCH**  
**PRIMARY EXAMINER**